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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 216

[Docket No. 130404331-4881-02]

RIN 0648-BD12

Marine Mammals; Subsistence Taking of Northern Fur Seals; St. George Island, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule modifies the subsistence harvest regulations for the Eastern Pacific stock of northern fur seals (Callorhinus ursinus) based on a petition from the Pribilof Island Aleut Community of St. George Island, Traditional Council (Council). The final rule authorizes Pribilovians of St. George Island to harvest up to 150 male young of the year fur seals annually during a new autumn harvest season from all breeding and hauling grounds, consistent with traditional practices, to meet the community's nutritional and cultural needs. Harvests of sub-adult male fur seals will continue to be authorized during the summer season as under existing regulations, and will be allowed at additional locations. The total number of fur seals harvested annually will remain within the range of 300-500 male animals that has been in place since 1997. Harvests will be coordinated between NMFS and the Council under an existing co-management agreement.

DATES: Effective [insert date of filing for public inspection with the Office of the Federal

Register].

ADDRESSES: Electronic copies of the Final Supplemental Environmental Impact Statement (SEIS), scoping report, St. George Tribal Resolution, proposed rule, and other related documents are available at: <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by email to OIRA_Submission@omb.eop.gov or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Michael Williams, NMFS Alaska Region, 907-271-5117, Michael.Williams@noaa.gov; or Shannon Bettridge, NMFS Office of Protected Resources, 301-427-8402, Shannon.Bettridge@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule on July 24, 2014 (79 FR 43007) to modify the subsistence harvest regulations for northern fur seals on the Pribilof Islands based on the petition from the Council (75 FR 21233; April 23, 2010). The proposed rule included several modifications to the existing regulations for the sub-adult harvest, in addition to proposing new regulations to authorize a separate young of the year harvest. This final rule implements the regulations for the young of the year harvest, and implements only a portion of the proposed modifications that would affect the sub-adult harvest. Specifically, this action removes restrictions on the locations available for the sub-adult harvest, adds a measure to suspend harvests if two females are killed, adds a measure to terminate harvests if three females are

killed, and makes non-substantive organizational changes to other regulatory provisions governing the sub-adult harvest. This regulatory action affects Pribilovians on St. George Island and reorganizes existing regulatory text to separate provisions applicable only to St. George Island from those applicable only to St. Paul Island.

St. George Island is a remote island located in the Bering Sea whose residents rely upon marine mammals as a major food source and cornerstone of their culture, and the harvest of sub-adult male northern fur seals has occurred there for well over 200 years. Food security for the residents of St. George is an ever present concern as a result of regular delays in barge and air traffic. The residents of St. George conduct an annual controlled subsistence harvest from the Northern fur seal stock under the authority of the Fur Seal Act (FSA) (16 U.S.C. 1155, 1161) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(b)). Pursuant to section 119 of the MMPA, NMFS entered into a co-management agreement with the Pribilof Islands Aleut Community of St. George Island in 2001 (16 U.S.C. 1388). NMFS is guided by this co-management agreement as it works with St. George to cooperatively implement subsistence harvest activities and monitoring programs. Regulations governing subsistence harvest of fur seals appear at 50 CFR part 216, subpart F.

The United States (U.S.) government began regulating the harvest of northern fur seals by the people of St. George Island in 1867 after the purchase of Alaska. From 1870 through 1890 the U.S. managed the commercial harvest of fur seals under a 20-year lease arrangement with private companies that were responsible for harvesting fur seals and selling the pelts on the world market. During this period, at least 501,324 fur seals (mean annual harvest = 23,872) were harvested for their pelts from St. George Island during the summer. The lease arrangement also stipulated that the Pribilovians were provided a subsistence food harvest in the autumn, and this

subsistence harvest was directed at male young of the year. The subsistence food harvest of young of the year was 28,064 (mean annual harvest = 1,477) for this 20-year period, and the Pribilovians were allowed to keep the pelts from the food harvest for trade and barter. A second 20-year lease arrangement, between the North American Commercial Company and the U.S., required the Pribilovians to collect fresh meat from the commercial harvest during the summer, and did not allow them to obtain their preferred fresh fur seal meat in the autumn from young of the year prior to the fur seals' winter migration from the islands. Consequently, the summer commercial land harvest of sub-adult males became the primary means for Pribilovians to obtain fresh meat for subsistence. The prohibition on harvesting young of the year has been retained to the present day.

In 1910, after the expiration of the second 20-year lease, the U.S. no longer delegated the management of the commercial harvests on the Pribilof Islands to the lessees. The U.S. managed and implemented the commercial harvest of fur seals on the Pribilof Islands until 1984. The subsistence harvest of northern fur seals is the focus of this regulatory action, but NMFS's understanding of harvest effects on the fur seal population is based on over 100 years of commercial harvest management, population assessment, and behavioral research. The SEIS (NMFS, 2014) analyzes the available evidence of the effects of the subsistence harvest of male fur seals and concludes that the harvest of up to 350 sub-adult and 150 young of the year male fur seals would have an insignificant effect on the St. George population of about 72,828 fur seals. NMFS has not detected a relationship between the number of sub-adult male fur seals killed or harassed during harvests and the abundance and trend of the population.

NMFS commercially harvested an average of 8,152 sub-adult males annually from 1963-1972 on St. George Island. In 1972, the U.S. began the first large-scale investigation into the

effects of commercial fur seal harvesting (Gentry, 1998). Since 1972, the St. George fur seal population decreased to its present size, showing no positive response to the reduction in the harvest of sub-adult male fur seals. From 1973 through 1975, the U.S. prohibited the St. George commercial harvest of sub-adult fur seals for their pelts in order to conduct research on the population dynamics and effects of harvesting. NMFS provided some excess fur seal meat to St. George residents from the St. Paul commercial harvest due to the harvest prohibition on St. George. Between 1976 and 1979, NMFS authorized subsistence harvests on St. George at Northwest and Staraya Artil hauling grounds. From 1980 to 1984, NMFS allowed subsistence harvests only at the Northeast hauling ground. In 1986 NMFS published fur seal subsistence harvest regulations (51 FR 24828; July 9, 1986) authorizing harvests on St. George Island at Northeast and Zapadni hauling grounds. These restrictions on St. George Island subsistence harvest locations were intended to preserve experimental and control sites for scientific investigations during the commercial harvest period (Gentry, 1998), which are no longer being pursued.

In 1984, the U.S. did not ratify the protocol to extend the Convention on the Conservation of Fur Seals, which had allowed commercial harvests of fur seals. This action resulted in the termination of the commercial harvest of fur seals on the Pribilof Islands, and inadvertently changed the way either community could obtain fresh fur seal meat. NMFS published an emergency interim rule (50 FR 27914; July 8, 1985) under the FSA and the MMPA to govern the subsistence harvest of northern fur seals on the Pribilof Islands for the 1985 season. NMFS acknowledged in the proposed rule (51 FR 17900; May 15, 1986) that the additional restrictions on St. George may not allow Pribilovians on St. George to satisfy their subsistence needs. On July 9, 1986, NMFS published a final rule that restricted the subsistence harvest of northern fur

seals by sex, age, and season for herd management purposes to limit the take to a sustainable level while providing for the legitimate subsistence needs of the Pribilovians (51 FR 24828). NMFS subsequently designated the Pribilof northern fur seal population as depleted under the MMPA in 1988 (53 FR 17888; May 18, 1988). In the preamble to the proposed rule for the depleted designation, NMFS stated that it did not contemplate further rulemaking to restrict Alaska Native subsistence harvest of fur seals as a consequence of a depleted designation (51 FR 47156; December 30, 1986).

In 2001, NMFS and the Council entered into a co-management agreement pursuant to section 119 of the MMPA. The purpose of that agreement is to conserve northern fur seals and Steller sea lions through cooperative effort and consultation regarding subsistence harvests. The Council has sampled, managed, monitored, and reported the sub-adult male subsistence fur seal harvest independently since the late 1990s, consistent with current regulations.

Population Status

NMFS manages the northern fur seal population as two stocks in the U.S.: the Eastern Pacific and the San Miguel stocks. Neither stock is listed under the Endangered Species Act. The Eastern Pacific stock includes northern fur seals breeding on Sea Lion Rock and St. Paul, St. George, and Bogoslof islands. NMFS designated the Pribilof Islands northern fur seal population as depleted under the MMPA on May 18, 1988 (53 FR 17888) after it had declined to less than 50 percent of levels observed in the late 1950s (about 2.1 million fur seals). Loughlin et al. (1994) estimated approximately 1.3 million northern fur seals existed worldwide, and the Pribilof Islands represented about 982,000 (74 percent of the total) in 1992. The 2012 abundance of fur seals on the Pribilof Islands was about 44 percent lower (546,720 fur seals) than the 1992 estimate (Towell et al., 2013). NMFS estimates an annual decline in pup

production for the Pribilof Islands of about 4 percent since 1998, and the annual decline for St. Paul (4.84 percent) is higher than for St. George, where the most recent trend (2004-2012) is stable and not significantly different from zero (Towell et al., 2013). The causes of the current fur seal decline on the Pribilof Islands are unknown.

Northern fur seals seasonally occupy specific breeding and non-breeding sites on St. George. The age and breeding status is the main determinant of where male fur seals are found during the breeding and non-breeding season. During the breeding season sub-adult males are excluded from the breeding sites (i.e., rookeries) by adult males and occupy resting sites known as hauling grounds (Figure 1 to part 216). Each of the six breeding sites has at least one distinct non-breeding hauling ground nearby (Figure 1). During the non-breeding season beginning about September 1, sub-adult males can be found on both rookeries and hauling grounds together with the remainder of the population.

Petition for Rulemaking

In September 2006, the Council submitted a tribal resolution to NMFS indicating the Federal government had previously allowed the community to harvest male fur seal young of the year in autumn for subsistence purposes. The Council requested that NMFS change the subsistence harvest regulations to allow residents of St. George the opportunity to return to their historic subsistence harvest patterns, including the harvesting of up to 350 sub-adult males in the summer and the harvesting of up to 150 male young of the year in the autumn each year. On April 23, 2010, NMFS published a notice of receipt of a petition (the tribal resolution) from the Council to revise the subsistence regulations for St. George Island to allow taking male northern fur seal young of the year during an autumn season (75 FR 21233). NMFS received no comments on the notice. Subsequently, NMFS worked with the Council to clarify the petition to

define the second harvest season from September 16 to November 30, to discuss young of the year harvest methods and areas, and to outline the process to proceed with rulemaking. In 2011, NMFS held scoping meetings on St. George Island and in Anchorage, AK, and provided a 60-day public comment period to consider possible alternatives. NMFS received scoping input during the St. George Island community meeting, and no one commented during the Anchorage scoping meeting. NMFS received only two letters during the comment period and both supported the Council's petition in the cultural and historic context of traditional and customary uses of marine mammals by Aleuts (NMFS, 2012). NMFS supplemented the 2005 environmental impact statement, and considered four alternatives in the SEIS to evaluate the impacts of the proposed action on the human environment (79 FR 31110; May 30, 2014). NMFS received two comment letters on a draft of the SEIS and provided responses to those comments in the final SEIS (79 FR 49774; August 22, 2014).

Changes to the St. George Northern Fur Seal Harvest Regulations

This action revises the subsistence harvest regulations at 50 CFR part 216, subpart F, to allow the harvest of northern fur seals to meet the subsistence needs of Pribilovians on St. George Island. This action allows St. George residents to carry out subsistence harvests focused on male young of the year during a second season (September 16 through November 30), in addition to the longstanding practice for St. George residents to harvest sub-adult fur seals. The new regulatory measures also implement new conservation controls on the St. George subsistence harvest. These include: (1) suspension of the harvest if two female fur seals are killed and a review of harvest practices by NMFS before the harvest may resume; (2) termination of the harvest for the season if three female fur seals are killed; (3) prohibition of take of young of the year fur seals from any breeding or resting areas when the most recent pup production

estimate has fallen below levels capable of sustaining a harvest; and (4) equal geographic distribution of the young of the year harvest, based on the most recent estimate of pups born at the various breeding areas. The final rule provides increased management flexibility in the seasonal and geographical aspects of the harvest, consistent with historical and cultural practices on St. George.

The final rule authorizes the subsistence harvests at a greater number of sites than under the current regulations governing the sub-adult harvest, such that the harvest effort would not be concentrated in time or space, thus minimizing effects on fur seals. The final rule also clarifies the Tribal and Federal responsibilities to co-manage the subsistence harvest of fur seals.

The final rule revises the following provisions of the existing (51 FR 24828; July 9, 1986) subsistence harvest regulations:

50 CFR Part 216	Revision
§ 216.72(c)	Removed and reserved
§ 216.72(d)	Revised to create distinct provisions applicable to St. George Island for sub-adult harvests and for young of the year harvests
§ 216.72(d)(1)	Renumbered and retained provisions specifying the sub-adult seal size limit, harvest season, and harvest suspension if the lower end of the allowable range is reached
§ 216.72(d)(2)	Renumbered and retained provisions specifying the allowable sub-adult harvest locations and frequency of harvests
§ 216.72(d)(3)	Renumbered and retained provision that only NMFS scientists can direct sealers to take seals with tags and/or entangling debris
§ 216.72(d)(4)	Renumbered and retained provision for harvest scheduling, sealer experience requirements, and traditional harvest methods requirements
§ 216.72(d)(5)	Renumbered and retained prohibition on taking adult fur seals or the intentional taking of sub-adult female fur seals
§ 216.72(d)(6)	Added to define the young of the year harvest season from September 16 through November 30. Added the young of the year harvest limit

	of 150 males or up to the lower end of the harvest range established in paragraph (b)
§ 216.72(d)(7)	Added to distribute the young of the year harvest equally according to population size by allowing up to 50 male young of the year from each of the three regional pairs of rookeries, and to describe the method of harvest as stunning and immediate exsanguination
§ 216.72(d)(8)	Added to define the scheduling and methods restrictions for the young of the year harvest
§ 216.72(d)(9)	Added to prohibit any harvest of sub adult or adult male fur seals or the intentional harvest of female fur seals
§ 216.72(d)(10)	Added to prohibit taking young of the year from any breeding areas when the most recent annual pup production estimate is below levels capable of sustaining harvest
§ 216.72(d)(11)	Added to require NMFS and the Council to review harvest practices no later than 120 days after the last harvest each year
§ 216.72(e)(1) – (e)(6)	Reorganized to retain for St. Paul Island the current sub-adult male fur seal subsistence harvest provisions
§ 216.72(f)(1)(i) – (f)(1)(iii)	Redesignated from paragraphs (e)(1)(i) – (e)(1)(iii)
§ 216.72(f)(1)(iv)	Added to suspend the harvest if two female fur seals of any age are killed on St. George Island
§ 216.72(f)(2) and (f)(3)	Redesignated from paragraphs (e)(2) and (e)(3)
§ 216.72(f)(4)	Added to review and lift suspensions issued under new paragraph (f)(1)(iv) for killing of two females if a remedy can be identified and implemented to prevent additional killings
§ 216.72(g)	Redesignated from paragraph (f)
§ 216.72(g)(1)	Added to establish termination of the St. George young of the year harvest on November 30 and retain termination of the sub-adult male harvest on August 8
§ 216.72(g)(2)	Added retain the termination of the harvest when subsistence needs have been satisfied or the upper end of the range has been reached
§ 216.72(g)(3)	Added to terminate the harvest on St. George when three female fur seals of any age have been killed during harvest on St. George
§ 216.74	Revised to create separate subsections for St. George and St. Paul, and to describe in the St. George subsection the co-management

	relationship between NMFS and the Council under section 119 of the MMPA and efforts by NMFS to partner with the tribal government to consider best harvest practices and facilitate scientific research.
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The current subsistence fur seal harvest range is 300-500 male fur seals annually on St. George Island (79 FR 45728; August 6, 2014). Of the total potential harvest limit of 500 male fur seals, this action authorizes the subsistence harvest of 150 young of the year males from September 16 through November 30 each year. Thus, if the Pribilovians on St. George intend to satisfy their subsistence needs in a given year by harvesting the full 150 young of the year during the autumn harvest season, they should harvest no more than 350 sub-adult male fur seals from June 24 through August 8. If the lower end of the subsistence harvest range for St. George is reached (currently set at 300; 79 FR 45728), and the Pribilovians have not satisfied their subsistence needs, the rule enables the Council on behalf of the Pribilovians to request that NMFS allow harvest up to the upper limit of the harvest range. At the point when the lower end of the harvest range is reached, the harvest is suspended for no more than 48 hours for NMFS and the Council to discuss and determine within the co-management structure the revised estimate of the number of seals required to satisfy the St. George residents' subsistence need and how many seals from each age class they intend to harvest.

Taking Male Young of the Year

The historical Aleut harvest of young of the year fur seals was discussed in the preamble to the proposed rule (79 FR 43007; July 24, 2014). The estimated annual total subsistence harvest level for St. George Island would remain consistent with the subsistence harvest range estimates of 300 to 500 male fur seals that NMFS evaluated in 2005 under the preferred alternative in the environmental impact statement for setting annual subsistence harvest levels

(NMFS 2005) and again in the 2014 SEIS (NMFS 2014). The harvest level would also remain consistent with NMFS's most recent estimate of the annual subsistence needs of Pribilovians on St. George (79 FR 45728; August 6, 2014).

NMFS does not expect that the harvest of young of the year males will have adverse effects on the fur seal population. As described in the preamble to the proposed rule (79 FR 43007; July 24, 2014), direct evidence from Russian harvests of young of the year fur seals and population modeling conducted by NMFS both indicate that a male young of the year harvest with the control measures contained in this final rule will be sustainable. In summary, NMFS (2014) analyzed numerous lines of harvest evidence including the harvest of northern fur seal pups from their Russian breeding islands (Kuzin 2010, Ream and Burkanov pers. comm.), survival models (Towell 2007, Fowler et al., 2009), and simplified direct additive losses (which assume all harvested males four years and younger would have survived to become reproductively active harem males) and concluded that no population level effects of the subsistence harvest of sub-adult and young of the year males are anticipated. Evidence provided in the SEIS and in the preamble to the proposed rule (79 FR 43007; July 24, 2014) indicates that efforts to protect female fur seals, whether or not they are sexually mature, are the most likely to have direct conservation value for the fur seal population. NMFS has included measures in the final rule, as summarized below, to keep the accidental mortality of females as close to zero as practical.

Establishment of a Second Harvest Season

The final rule establishes the second season, exclusively for male young of the year fur seals, from September 16 until November 30. Those dates ensure the young of the year harvest occurs after the breeding season, which ends in August, and thus provide protection for late-

breeding young fur seals. The timing of the second season also allows for young of the year to begin using sites separate from those used by lactating adult female and sub-adult fur seals. Young of the year wander and spend time away from the rookeries and hauling grounds (Figure 1), thereby providing the opportunity for the harvest to reduce incidental harassment of older seals still using the rookeries and hauling grounds during the second harvest season. The end date of the second subsistence harvest season coincides with the time when the majority of the fur seal population migrates away from the Pribilof Islands, which typically occurs by early December.

The final rule does not alter the requirement to terminate the existing sub-adult male harvest by August 8 of each year. As discussed in the preamble to the proposed rule (79 FR 43007; July 24, 2014), ending the sub-adult harvest by August 8 minimizes the chance of accidentally taking young female fur seals.

Distributing the Harvest

The young of the year harvest will occur during the non-breeding season in locations that earlier in the year were both breeding and non-breeding areas. Young of the year harvests could occur in any areas occupied by young of the year. The final rule distributes the young of the year harvest into three regions (North, East, and South) of fur seal breeding to avoid concentrating harvest pressure on a subset of the population and to provide adequate opportunity for the community to satisfy its subsistence needs. Each region contains two breeding areas and at least two hauling grounds. The North region includes two separate and adjacent breeding areas (North and Staraya Artil rookeries) that make up 32.9 percent of the island population based on the most recent estimate of pups born. The East region includes East Reef and East Cliffs rookeries, which account for 33.3 percent, and the South region includes South and Zapadni

rookeries which account for the remaining island pup production (33.7 percent). Under the final rule, up to 50 male pups could be harvested from each region (i.e., equal distribution based pup production), reducing the possibility for concentration of lethal or sub-lethal effects in particular areas.

Prohibition on Taking from Small Breeding Areas

Approximately 16,000 pups were born on St. George Island in 2012; however, the numbers born at each breeding area vary widely (Towell et al., 2013). Northern fur seals exhibit strong site fidelity (i.e., repeatedly return to a site over years) and philopatry (i.e., return to the place of birth) (Gentry, 1998). These two behavioral tendencies have allowed humans to harvest and study fur seals for many decades and are summarized in the preamble to the proposed rule (79 FR 43007; July 24, 2014) and described more fully in the SEIS (NMFS, 2014).

The final rule prohibits young of the year harvests at breeding locations determined to be at risk of reaching unsustainable population levels due to low pup production. As discussed in the preamble to the proposed rule (79 FR 43007; July 24, 2014), NMFS will use an annual minimum pup production threshold of 500 to indicate breeding areas and their associated hauling grounds at which young of the year harvest would not be allowed. NMFS's determination is based on modelling and empirical evidence. NMFS first evaluated models that consider the maintenance of genetic diversity in a population (effective population size, N_e) and the effects of demography and environmental variability on population persistence (minimum viable population size, MVP). Adapting model estimates from Olesiuk (2012), NMFS calculated minimum sustainable pup production levels for the breeding sites, and these ranged from 300 (N_e model) to 600 (MVP model) pups born (Johnson 2014). NMFS then evaluated historical pup production data from 1912-1922, when the population was recovering from its lowest levels

in recorded history, to provide an empirical estimate of minimum viable pup production. NMFS identified only four rookeries that during the 1912-1922 period had declined to (or below) the range of 300 to 600 pups born; of these, three rookeries increased and remained above that range, and one went extinct. NMFS records show the lowest number of pups born during the period at Zapadni Reef, Ardiguén, and East Reef rookeries was 186, 417, and 469, respectively. Each of these rookeries fell within the modeled minimum viable population range of 300-600 and all recovered to the present. Lagoon rookery fell to 388 pups born, increased to 500 during the period, and subsequently went extinct in the early 1940s. As new fur seal data or models become available, NMFS may refine this threshold.

To evaluate whether the smallest breeding areas are susceptible to extinction, NMFS will project estimated biennial pup production at each breeding area 10 years into the future (see Johnson, 2014). If the projections indicate a greater than 5 percent probability that pup production at a breeding site will fall below 500 within the ten-year time horizon, no young of the year harvest will be allowed at that site. The ten-year time horizon allows for natural variability of pup production into the future. Pup production for each rookery is estimated separately every two years, and therefore rookery-specific young of the year harvests can be managed separately during this period. For example, using 2012 data the quasi-extinction analysis of pup production and trend for Staraya Artil rookery indicates that the population at that rookery has over a 65 percent probability of falling below 500 during the next 10 years, and none of the other breeding areas have greater than a 5 percent probability of reaching 500 (Johnson, 2014). NMFS adopted a 5 percent probability of reaching the quasi-extinction threshold within ten years based on analysis from Gerber and DeMaster (1999) and considers this threshold to be conservative. Based on the quasi-extinction analysis using methods from

Johnson (2014), this action effectively prohibits all young of the year harvests at Staraya Artil rookery until pup production from that rookery increases to a level at which there is a 5 percent or lower probability of pup production being below 500 during the next 10 years.

The final rule distributes the young of the year harvest limit equally across the three regions of two rookeries each. Thus, while Staraya Artil rookery and its single hauling ground remains closed to young of the year harvests at this time, harvesters could take up to 50 male young of the year from the other rookery (North Rookery) in the North Region. This geographic dispersion of effort and prohibition on the taking from areas with small population size will allow NMFS and the Council to ensure that individual breeding locations do not reach population sizes low enough that recovery is highly uncertain. NMFS and the Council will review and update the statistical analysis as new data are available, and during annual co-management meetings will determine the locations where young of the year harvests can occur based on the updated analysis.

Suspension or Termination of the Harvest

Historically, the northern fur seal population has declined during periods when there were no prohibitions on intentional or un-intentional harvest of females. The northern fur seal population declined through 1979, well beyond expectations of the member nations to the Fur Seal Treaty of 1911 (York and Hartley, 1981), as a result of female harvests. Trites and Larkin (1989) estimated that an annual 2 to 5 percent reduction in adult female survival over the period of 1950 to 1987 was the most likely contributor to the lack of recovery by the Pribilof fur seal population. NMFS population modeling indicates female young of the year may have at least five to six times higher reproductive value than male young of the year (NMML unpublished data), primarily due to their reproductive ecology whereby one male inseminates many females.

The final rule maintains all prohibitions on taking during the sub-adult male harvest season. The final rule creates new prohibitions on the harvest of sub-adults, adults, or the intentional harvest of young of the year female fur seals during the male young of the year harvest season. From 1985 to 2013, five sub-adult females were harvested accidentally on St. George Island out of a total harvest of 4,994 seals (0.1 percent accidental sub-adult female harvest rate).

Under the final rule, NMFS would suspend the harvest in the event of two female mortalities and terminate the harvest in the event of a third female mortality in a given calendar year. These measures create a powerful incentive for St. George harvesters to spend adequate time to identify sex correctly and avoid killing females. NMFS's intent in defining the upper limit of female mortalities at three per year is to encourage harvesters to develop and improve best practices as part of the young of the year harvest to ensure that the accidental female harvest rate under the new regulations remains close to zero. Female mortalities that would trigger the suspension or termination of the harvest include direct harvest mortalities as well as indirect mortalities due to trampling or other disturbance associated with the harvest.

If two females are killed and NMFS suspends the harvest, NMFS could reverse the suspension upon review of the circumstances of the female mortalities and identification by St. George and NMFS of a remedy to minimize the risk of additional accidental mortality of any female fur seals. If the harvest is resumed and another female is killed, then the harvest will be terminated for the year.

Cooperative Management of the Subsistence Harvest

In 2000 and 2001, NMFS signed co-management agreements with Aleut Community of St. Paul Island, Tribal Government and the Aleut Community of St. George Island, Traditional

Council. These agreements set in place a process for NMFS and the tribes to communicate, partner, and cooperate on issues related to the subsistence harvest of northern fur seals. This process has developed a collaborative relationship that has created both greater and more cost effective opportunities for NMFS to collect information about fur seal disease, health, and age composition by training local tribal members and building that capacity within the tribal governments. In addition, tribal government staff has disentangled fur seals, recorded tag numbers, and collected information about the locations of seals captured in the harvest round-ups and reported this information annually in their harvest reports with minimal involvement by NMFS. Through co-management NMFS has also worked with both tribal governments to conduct research. The final rule aligns the purposes of the co-management agreement between NMFS and the Council with the subsistence harvest regulations with the subsistence harvest regulations for St. George, and retains the subsistence harvest regulations for St. Paul.

The collaborative relationship built under co-management will be strengthened by NMFS and the Council continuing to work jointly to develop best harvest practices, which balance conservation, sustainability, and cultural interests. NMFS and the Council will refine these harvest practices as young of the year harvest experience is gained, and will formalize those practices via the co-management council. NMFS will post the best harvest practices on the NMFS Alaska Region website.

The best harvest practices will include a description of jointly agreed-upon measures to consider before each young of the year harvest. Further description of the intent of the best harvest practices is provided in the preamble to the proposed rule (79 FR 43007; July 24, 2014).

The Council has expressed its intention during co-management meetings to utilize the same harvest methodology for the young of the year harvest as it uses for the existing sub-adult

harvest, whereby a crew is organized in advance and assesses those locations most likely to be harvested. From those likely harvest locations the crew would consider the prevailing weather conditions, presence of harvestable young of the year, accessibility and space for harvest, presence of non-harvestable seals, and the impact those non-harvestable seals would have on the implementation of the harvest. Whether those methods defined as traditional in the emergency final rule (51 FR 24828; July 9, 1986) will be applicable to the harvest of young of the year is unknown because a young of the year harvest has not occurred for over 120 years. The final rule will ensure humane harvesting of young of the year via stunning and immediate exsanguination, but flexibility in some of the specific harvest methods is required to achieve the outcomes of reduced stress, injury, and disturbance to harvested and un-harvested seals and to minimize taking of female seals. NMFS's intent is to encourage innovation and improvements to the subsistence harvest methods for fur seals.

Comments and Responses

NMFS received comments on the proposed rule to change the subsistence harvest regulations (79 FR 43007; July 24, 2014) from the Humane Society of the United States, the Marine Mammal Commission (Commission), and one individual. A summary of the comments received and NMFS's responses follows.

Comment 1: One commenter objected to the fur seal harvest overall, and stated that the harvest is about money, not food or culture, and that the culture on St. George has changed tremendously such that the harvest is not justified as a cultural need.

Response: NMFS disagrees. The existing subsistence harvest of northern fur seals on St. George is set at a maximum of 500 sub-adult males and represents less than 1 percent of the entire population of fur seals residing on St. George Island. The Fur Seal Act and MMPA both

provide for the subsistence harvest of northern fur seals to meet the dietary and cultural needs of the Pribilof Island Alaska Native residents (Pribilovians). The subsistence harvest remains very important to the culture of the Pribilovians, even with changes that have taken place on the Pribilof Islands in modern times. The final rule includes new harvest control measures that will further ensure the sustainability of the subsistence harvest.

Comment 2: A commenter stated that the announcement of the availability of the draft SEIS should have been published in the Federal Register rather than simply being sent to a small universe of previously interested commenters.

Response: As NMFS noted in the response to comment section in the SEIS, and as is standard practice, NMFS worked with the Environmental Protection Agency (EPA) to publish the Notice of Availability for the draft SEIS in the Federal Register on May 30, 2014 (79 FR 31110). Likewise NMFS worked with EPA to publish a Notice of Availability for the final SEIS in the Federal Register on August 22, 2014 (79 FR 49774).

Comment 3: The proposed regulations adopt the “proposed action” alternative in the Draft Supplemental Environmental Impact Statement. Based on the short space of time between the close of the comment period on the DSEIS and the start of the comment period on the proposed rule, it is not clear that NMFS considered or addressed concerns raised during the comment period on the DSEIS.

Response: NMFS responded to all of the comments on the DSEIS in the response to comments section of the SEIS (79 FR 49774; August 22, 2014) as required by NEPA. NMFS considered those comments received on the DSEIS and addressed public comments on the proposed rule in the preamble to this final rule.

Comment 4: A commenter stated that for reasons that are poorly understood, during

1998-2010, pup production declined 5.46% per year on St. Paul Island and 2.09% per year on St. George Island with the estimated pup production in 2010 below the 1916 level on both St. Paul and St. George Islands. There is every indication that the decline has not stopped. NMFS's management decisions related to this stock emphasize the importance of protecting females and increasing pup survival. The 2005 EIS, which the SEIS supplements, states that harvest extensions beyond the first week of August in 1986 and 1987 resulted in an increased number of female fur seals taken. Expanding the harvest to the fall as proposed increases the risk that females will be killed unintentionally.

Response: NMFS agrees that protecting female fur seals and their future reproductive potential is important. NMFS disagrees with the commenter's assertion that the decline in pup production has not stopped on St. George. NMFS examined data for the period since the 2005 EIS and the pup production trend for St. George Island between 2004 and 2012 was stable (i.e., not increasing or declining, $SE = 0.79$, $P < 0.69$), as noted on page 33 of the final SEIS. By including new conservative harvest controls, this action will provide greater protection for female fur seals and promote future reproductive potential by increasing female survival.

NMFS agrees with the commenter that distinguishing between sub-adult male and female fur seals is difficult. This action creates separate young of the year harvest season that is distinct from the sub-adult harvest, and thus it should have no effect on sub-adult female mortality. The 1986 and 1987 fur seal harvest extensions noted in the 2005 EIS extended the harvest of sub-adult males, and this final rule does not authorize an extension to the August 8 end date for the sub-adult male harvest season. This action authorizes a second season to allow for the exclusive harvest of young of the year fur seals, which, unlike sub-adult fur seals, can be safely handled to distinguish females from males prior to selection for harvest. As an additional measure to

protect the population, the final rule includes a hard limit on female mortality: the subsistence harvest will be suspended if two female fur seals are killed and terminated if three females are killed. No such thresholds exist for accidental mortality of sub-adult females under current regulations.

The limits on accidental mortalities of female fur seals are precautionary measures. NMFS does not expect that these limits will be reached because female mortality has been very low during the sub-adult male harvest (the practices for which would not change under the final rule) and the young of the year male harvest would include practices to safely and effectively distinguish males from females. Therefore, NMFS believes that the final rule will reduce the risks of accidental female fur seal mortality and is more protective than the existing regulations.

Comment 5: Self-reporting of the sex of harvested fur seals by the tribal government would go against the self-interest of the hunters, since reporting dead females can terminate the hunt. Moreover, self-reporting generally results in under-reporting. Independent monitoring should occur to ensure accurate reporting, particularly during any fall hunt for young of the year animals, which may unintentionally result in the deaths of young females.

Response: NMFS disagrees that self-reporting generally results in under-reporting of accidental take of females or that the harvester's self-interest creates an incentive not to report. The Council has self-reported from 2003 to the present and during this time the annual rate of accidental female mortality in the sub-adult subsistence harvest is 0.36 female seals killed per year. The self-reported rate of 0.36 female seals killed per year is not different from the rate reported by NMFS observers (0.37 female seals killed per year) who were present at 100 percent of the subsistence harvests prior to 2003. This indicates that the sub-adult subsistence harvest monitoring process developed through co-management with the Council yields accurate data on

accidental take of females during the sub-adult harvest.

Even with the addition of a hard cap that will terminate the harvest if three females are killed, NMFS has no indication that female mortalities will go undetected. As noted in the SEIS, male and female young of the year are not segregated within the breeding areas or hauling grounds, yet sealers can handle young of the year fur seals safely to accurately distinguish male from female fur seals. During the first three years of the autumn harvest season, NMFS will strive to have staff present during 100 percent of the young of the year harvests. NMFS and the Council will work in close coordination to ensure that harvesters accurately identify and release female young of the year fur seals prior to harvesting each animal. This close coordination will ensure that NMFS and the Council's efforts are consistently aligned with the harvest regulations and conservation of northern fur seals, that accidental mortality of females will not likely approach the limit of three, and that the number of female animals killed during the fall harvest season is reported accurately. NMFS also notes that, as co-managers of the harvest, the Pribilovians on St. George Island have a strong interest in avoiding mortality of female fur seals because they want the harvest to continue sustainably into the future. Further, in a continuation of its longstanding collaboration with NMFS on scientific research related to fur seals, the Council plans to collect canine teeth from 100 percent of the harvested young of the year seals for aging and sex determination by NMFS. NMFS intends to use the canine teeth to independently sex harvested seals, which will deter the Council from falsely reporting the sex of harvested seals.

Comment 6: It is not clear how the harvest on St. George will be conducted. As the proposed regulations are currently written, harvests could be conducted simultaneously on more than one rookery or by multiple sealing crews. NMFS should address possible simultaneous

harvests more explicitly in the final rule and how monitoring will occur to ascertain whether female fur seals are being killed. If the St. George community will not conduct simultaneous harvests, this should be specified in the rule and appropriate changes made to the regulatory language.

Response: During the past 30 years of sub-adult male harvests under the subsistence regulations, simultaneous harvests were never proposed by the sealers, tribe, or community. NMFS does not expect simultaneous harvests to occur, and even if they do, the planned methods for ascertaining and reporting female fur seal mortality during single harvests would be equally effective for simultaneous harvests. Therefore, NMFS does not agree that the regulations need to include any special monitoring provisions to address simultaneous harvests by multiple sealing crews.

Comment 7: It is not clear what fur seal harvest monitoring will be carried out. Section 216.74 of the proposed rule recognizes that NMFS representatives are responsible for compiling information related to sources of human-caused mortality and serious injury of marine mammals, and that the Pribilovians are responsible for reporting on the “actual level of subsistence take.” This provision of the proposed rule is vague on how these tasks will be accomplished and in what timeframe. It is unclear whether efforts to avoid taking female pups will be successful or whether the suspension and termination thresholds will be reached quickly. Sufficient monitoring is needed to ascertain on a near real-time basis whether female seals are being killed and that those responsible for managing the harvest are notified promptly when the female fur seal threshold is reached. NMFS should provide more detail in the preamble on what monitoring will be conducted. NMFS should specify the applicable monitoring and reporting requirements in regulations more precisely to ensure that those requirements are sufficient to provide timely

information to decision makers whenever female seals are killed.

Response: As explained in response to Comment 5, based on nearly 30 years of sub-adult male harvests on St. George Island, NMFS expects that the young of the year harvest practices will effectively limit mortality of females. Every young of the year fur seal will be handled and sexed prior to harvest. NMFS will strive to be present during all young of the year harvests during the first three years and will then reassess what degree of NMFS monitoring is needed over the longer term. The measures specified in the final rule provide adequate assurance that female mortality will be very limited and that any accidental harvest of females will be reported.

Comment 8: It appears that NMFS and the Pribilovians intend to apply harvest methods similar to those used for sub-adult male harvests to the harvest of young of the year to determine whether they are effective or whether changes need to be made. The preamble to the final rule should provide additional detail about how the proposed changes to the harvest protocol, if any, would be identified, considered, and approved.

Response: NMFS appreciates this comment, and has included additional information regarding young of the year harvest methods in the preamble to this final rule. The Council will work with NMFS via co-management to evaluate how the specific methods that have been used effectively for the sub-adult harvest should be adapted to provide for an effective young of the year harvest. These methods will be documented and refined over time through a written set of best harvest practices, as described in the preamble to the proposed rule (79 FR 43007; July 24, 2014).

Comment 9: Two comments expressed general support for the new conservation measure that would prohibit the harvest of young of the year fur seals from any breeding area where the recent analysis projects that pup production has greater than a 5 percent probability of

falling below a level capable of sustaining a harvest in 10 years. One commenter expressed support for including conservatism in this metric.

Response: NMFS acknowledges the supportive comments and agrees that conservative controls are appropriate.

Comment 10: NMFS intends to use 500 as the pup-production lower threshold for evaluating quasi-extinction or minimum sustainable pup-production size. Lagoon Rookery reached a low of 388 pup births, and although it later returned to 500 births, it eventually went extinct. NMFS needs to consider establishing a higher pup-production threshold as the appropriate standard.

Response: NMFS identified four rookeries that had declined during the 1912-1922 period to (or below) the range of 300 to 600 pups born; of these, three rookeries increased and remained above that range, and one went extinct. NMFS records show the lowest number of pups born during the period at Zapadni Reef, Ardiguén, and East Reef rookeries was 186, 417, and 469, respectively, and all recovered and have remained above the minimum viable population size range of 300 to 600 to the present. The commenter is correct that Lagoon rookery fell to 388 pups born, increased to 500 during the period, and subsequently went extinct in the early 1940s. NMFS determined that 500 is an appropriate pup production threshold because three of the four rookeries for which records are available recovered from pup production numbers that dipped to or below that level, and because the final rule is coupling the pup production threshold of 500 with a prohibition on the harvest of young of the year fur seals from any breeding area where the analysis projects greater than a 5 percent probability that pup production will fall below that level within 10 years. NMFS is not certain that 500 is the optimal pup production threshold to select within the modeled minimum viable population size range of 300 to 600, but NMFS chose

500 based upon empirical evidence as a reasonable indicator of the level of pup production below which there would be concern about whether harvests may be sustainable. NMFS may identify a different threshold in the future, higher or lower than 500, if new modelling or empirical evidence emerges to suggest that 500 is not the appropriate threshold.

Comment 11: It is not clear why the proposed conservation measure to prohibit harvests at breeding areas that have low pup production and a low probability of sustaining harvest over a 10-year period should only be applicable to the harvest of the young of the year. The final rule should also prohibit sub-adult harvest in breeding areas that NMFS projects will have a greater than 5 percent probability of falling below a level capable of sustaining harvest in ten years.

Response: NMFS appreciates this suggestion and will consider whether to apply this conservation control to the sub-adult male harvest via a separate rulemaking.

Comment 12: Revising regulations at 50 CFR 216.74 by removing the requirement that subsistence harvesters cooperate with scientists engaged in fur seal research is concerning. Scientific sampling of whiskers, organs, and other tissues is needed to understand possible changes in the fur seal diet that may contribute to the stock's decline and to ascertain toxin exposure. It is unclear how reliance on voluntary cooperation between harvesters and scientists pursuant to a co-management agreement will assure proper sampling required for assessment of species and ecosystem health. If 50 CFR 216.74 is revised, the revised regulations should continue to provide a mandate that subsistence harvesters assist in scientific monitoring, managing, sampling, and reporting during the two harvest seasons while supporting the co-management process.

Response: Neither the Council nor NMFS intend to eliminate cooperation with scientific samplers during the harvest. NMFS has provided additional explanation in the preamble to this

final rule to describe how the co-management process has developed an improved and more effective means for harvesters and tribal members to support and participate in fur seal sampling and research assessing fur seal health and human-caused mortality. The co-management agreement creates a partnership between the Council and NMFS, and the Council has asked NMFS to ensure that subsistence needs during the harvest are of equal priority and not secondary to data collection for scientific investigations. The revisions to 50 CFR 216.74 will better reflect this collaborative approach. To further clarify that data collection should continue, NMFS added the phrase “and to facilitate scientific research” at the end of § 216.74.

NMFS and the Council will continue to use co-management as a means to provide opportunities for scientists to collect samples from seals taken for subsistence purposes. The final rule does not include a mandate for cooperation with researchers, as suggested by the commenter, because NMFS’s experience is that a co-management approach is more effective than a prescriptive mandate. For example, evidence of morbillivirus exposure of pinnipeds in the North Pacific represented an unknown risk to fur seals and other pinnipeds in 2010. In 2011, NMFS did not have resources to collect samples from fur seals to determine whether fur seals were exposed to morbillivirus. NMFS and the tribal governments on both islands agreed within the co-management process to support such sampling from the subsistence harvest. On St. George Island all of the samples were collected by harvesters or tribal council members in 2011, 2012, 2013, and 2014. The St. George Council staff labelled and stored the samples for transfer to NMFS for analysis. Similar examples of the success of the co-management partnership are evident in the reporting of entangled seals and the disentanglement of those seals when practical during the subsistence harvests on both islands. The subsistence harvest reports are available on the NMFS Alaska Region website to verify the actions taken by harvesters and tribal government

staff from both islands which have contributed to NMFS understanding of sources of fur seal mortality and disease exposure.

Comment 13: Because the harvest of young of the year has not been authorized for more than 100 years, it is less clear who should be authorized to harvest the seals and by what method. The proposed rule tries to address this by eliminating the requirement that sealers on St. George be experienced and by specifying that harvest methods ultimately selected will be designed to “reduce disturbance, injury, and accidental take of females.” The proposed regulations indicate that those methods are expected to include organized drives from congregating areas to inland killing fields, followed by stunning and immediate exsanguination, unless NMFS, in consultation with the Pribilovians conducting the harvest, determines that alternative methods will not result in increased stress to harvested and unharvested seals, increased disturbance or injury to resting seals, or the accidental take of females. Adopted harvest methods should be designed to achieve these goals. Making these determinations will require collection and analysis of fairly detailed information on the responses to seals of harvest practices and may benefit from review by veterinarians as well as biologists.

Response: NMFS acknowledges the comment. As noted above in this preamble, NMFS will work with the Council via the co-management process to develop and refine a set of best harvest practices to minimize disturbance and injury of fur seals and to minimize the possibility of accidental mortality of female fur seals.

Comment 14: Because it is unclear whether the harvesting methods employed for sub-adult males will be appropriate for harvesting young of the year, some degree of flexibility is needed. However, at the outset only “experienced sealers” (i.e., those with experience taking sub-adult males) should be allowed to participate in the harvest of young of the year.

Response: NMFS agrees that flexibility is needed to allow harvesters to be innovative in devising efficient ways to achieve conservation outcomes. Thus, the Council will work in partnership with NMFS to develop and refine a set of best harvest practices to minimize effects on harvested and non-harvested seals, incidental disturbance of seals, and mortality of females. NMFS is not requiring participating sealers to be experienced because experience harvesting sub-adults is not the best indicator of whether a given sealer will be able to carry out a young of the year harvest in a way that minimizes negative effects such as harassment of harvested and non-harvested seals and mortality of females. Residents of St. George are generally very familiar with fur seal behavior and harvests whether they have participated in the sub-adult harvest or not, and the community has a vested interest in conducting the young of the year harvest in an efficient and sustainable manner. NMFS therefore determined that implementing this final rule together with the planned development of best harvest practices via the co-management process provides sufficient safeguards for a sustainable harvest.

Comment 15: NMFS proposed to remove from the St. George regulations the requirement that sealers on St. George be “experienced” and proposed to remove “traditional” from the description of methods for sealing, yet the provisions would be retained for St. Paul. NMFS also proposed to remove from the St. George regulations the requirement that “Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists” yet the same provision would be retained for St. Paul. Furthermore, NMFS proposed to drop the maximum size restriction (124.5 cm) for harvesting sub-adult males on St. George, but did not provide an explanation.

Response: This final rule does not finalize the proposed regulations that would have rescinded the sub-adult harvest regulatory requirements that harvesters be “experienced,” that

harvesters use “traditional” harvesting methods, that harvesters may “only take seals with tags and/or entangled debris if so directed by NMFS scientists,” or that imposed a size restriction that harvesters may only take sub-adult males of 124.5 cm or less. These provisions are retained in the final rule; NMFS may further revise the regulations for the sub-adult harvest at a later date.

Comment 16: Current regulations limit harvest at each haulout on St. George to no more than twice per week, but the proposed rule provided no indication regarding the frequency of harvests at a particular site during the season, possibly due to an oversight. NMFS should consider changing the frequency of harvests of any approved sites on St. George from twice per week to once per week.

Response: The commenter is correct that NMFS inadvertently omitted a limit on the frequency of harvests from the proposed rule. The final rule retains the regulatory requirement that no area may be harvested more than twice per week. NMFS may further revise this regulatory limit in a future rulemaking.

Comment 17: A commenter suggested that NMFS restructure the proposed regulatory text applicable to St. George into distinct sections that apply to the sub-adult harvest and to the young of the year harvest.

Response: NMFS agrees and has restructured the regulatory text accordingly to improve clarity.

Comment 18: A commenter suggested that the proposed changes to § 216.81, which would provide that authorized subsistence harvesters of fur seals are allowed on rookeries from September 16 to November 30, would create ambiguity regarding permissible access.

Response: NMFS agrees and is not implementing those proposed changes.

Comment 19: NMFS received comments identifying citation errors and inadvertent

omissions.

Response: NMFS made appropriate revisions as described in the following subsection.

Changes from the Proposed Rule to the Final Rule

In addition to the changes discussed above in response to public comments, NMFS made the following changes in the final rule.

The renumbered § 216.72(d) now provides distinct regulatory provisions applicable to St. George sub-adult harvest and the St. George young of the year harvest to improve clarity as suggested by a commenter. NMFS added provisions retaining existing regulatory requirements applicable to the sub-adult harvest. Specifically, these provisions retain existing requirements concerning the 124.5 cm size limit for sub-adults, the authority to take seals with tags or entangling debris if so directed by NMFS scientists, the requirement for harvesters to be experienced, the requirement to use traditional harvest methods, and the prohibition on any taking of adult fur seals or pups, or the intentional taking of sub-adult female fur seals. As a result, the only changes to the sub-adult harvest as compared to the existing regulations are the availability to harvest at additional sites besides Northeast and Zapadni (per § 216.72(d)(2)), the suspension of the harvest if two female fur seals are killed (per § 216.72(f)(1)(iv)), and the termination of the harvest if three female fur seals are killed (per § 216.72(g)(3)).

NMFS added a provision at § 216.72(d)(9) applicable only to the young of the year harvest on St. George to clearly prohibit any harvest of adult or sub adult fur seals or intentional harvest of young of the year female fur seals.

NMFS clarified that the subparagraph now appearing at § 216.72(d)(10) applies to the hauling ground(s) associated with designated breeding areas, and not only to the designated breeding areas. Thus, no young of the year fur seals may be taken from any designated breeding

area or its associated hauling ground(s) where the most recent NMFS analysis projects that pup production has greater than a 5 percent probability of falling below a level capable of sustaining a harvest in 10 years.

NMFS added scheduling provisions for the St. Paul harvest in § 216.72(e) to correct an inadvertent omission from the proposed rule of language that is consistent with the existing regulations.

NMFS corrected an error in § 216.72(f) where the proposed rule incorrectly referenced section 215 and corrected text references in §§ 216.71 and 216.72.

NMFS clarified that § 216.72(g)(3) applies only to St. George Island.

NMFS inserted the phrase “provided for in § 216.71” into § 216.72(g)(3) to clarify that take provided for in § 216.71 shall terminate if a total of three female fur seals are killed during the harvest season.

NMFS added the correct statutory references to § 216.74. NMFS also split § 216.74 into two subsections, one for St. George Island and one for St. Paul Island, to clarify that the language for § 216.74 that NMFS included in the proposed rule was only intended to apply to St. George. Subsection (a) is established by this rulemaking to revise the description of how harvesters and Tribal and Federal officials cooperate on St. George, and subsection (b) is identical to the existing text for § 216.74 but will now apply only to St. Paul.

OMB Revisions to Paperwork Reduction Act (PRA) References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule adds a data element for

the reporting of the actual subsistence harvest within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the section resulting from this final rule.

Classification

NMFS has determined that this final rule is consistent with the Marine Mammal Protection Act, the Fur Seal Act, and other applicable laws. Pursuant to 5 U.S.C. 553(d) the NMFS Assistant Administrator finds good cause to waive the 30-day delay in the effective date of this rule because such a delay would be contrary to the public interest. A delay in effectiveness of the revised regulations would preclude St. George residents from meeting their subsistence needs by delaying the resumption of the traditional young of the year fur seal harvest for a full year until September 16, 2015, and would delay regulatory revisions that would implement more sustainable subsistence harvest practices in furtherance of the MMPA and the Fur Seal Act. In addition, the Assistant Administrator finds that the regulations would relieve some unnecessary subsistence harvest restrictions currently imposed on St. George residents by expanding the number of areas on the island where subsistence harvest activities may occur, by allowing for subsistence harvests during a second season, and by allowing for subsistence harvests of a younger age class of fur seals. The revised regulations would allow for a sustainable harvest practice that occurred historically but which the current regulations do not allow.

National Environmental Policy Act

NMFS prepared an SEIS evaluating the impacts on the human environment of the subsistence harvest of northern fur seals on St. George Island. A Notice of Availability for the final SEIS was published in the Federal Register on August 22, 2014 (79 FR 49774).

Executive Order 12866 and Regulatory Flexibility Act

This action has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

NMFS prepared an analysis under the Regulatory Flexibility Act that carefully examined the potential impacts, including possible economic benefits and costs, and potential adverse economic burdens, that may accrue uniquely to small entities, attributable to the action described above. NMFS certified at the proposed stage of this rule that it will not have a significant economic impact on a substantial number of small entities, and NMFS received no comments on that certification.

Executive Order 13132–Federalism

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with the city and tribal governments on St. George Island in response to a petition by the tribal government of St. George.

Executive Order 13175–Native Consultation

Executive Order 13175 of November 6, 2000, the executive Memorandum of April 29, 1994, the American Indian Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination Policy Statement (78 FR 33331; June 4, 2013) outline NMFS’s responsibilities in matters affecting tribal interests. Section 161 of Pub. L. 108-100 (188 Stat. 452) as amended by section 518 of Pub. L. 108-447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native

corporations. NMFS contacted the tribal government of St. George Island and their local Native corporation (Tanaq) about revising the regulations regarding the subsistence harvest of northern fur seals on St. George Island and their input is incorporated herein.

Collection of Information Requirements

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0699. Public reporting burden for harvest reporting is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Estimated responses include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS Alaska Region (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

References Cited

A list of all the references cited in this rule may be found on www.alaskafisheries.noaa.gov/protectedresources/seals/fur.htm (see ADDRESSES).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 216

Alaska, Marine Mammals, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: October 30, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 216 as follows:

Title 15 — Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE
PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add an entry in alphanumeric order for “216.74” to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control No. (All numbers begin with 0648-)
* * * * *	
50 CFR:	
* * * * *	
216.74	-0699
* * * * *	

Title 50 — Wildlife and Fisheries

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE
MAMMALS

3. The authority citation for 50 CFR part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

4. In § 216.72:

A. Remove and reserve paragraph (c);

B. Revise the section heading and paragraphs (d), (e), and (f); and

C. Add paragraph (g) to read as follows:

§ 216.72 Restrictions on subsistence fur seal harvests.

* * * * *

(d) St. George Island. The subsistence fur seal harvest restrictions described in paragraphs (d)(1) through (d)(5) of this section apply exclusively to the harvest of sub-adult fur seals; restrictions that apply exclusively to the harvest of young of the year fur seals can be found in paragraphs (d)(6) through (d)(11) of this section.

(1) Pribilovians may only harvest sub-adult male fur seals 124.5 centimeters or less in length from June 23 through August 8 annually on St. George Island up to the lower end of the harvest range established in paragraph (b) of this section. When the lower end of the range has been reached paragraphs (f)(1)(iii) and (f)(3) of this section apply.

(2) Pribilovians may harvest sub-adult male fur seals at the hauling grounds shown in Figure 1 to part 216. No hauling ground may be harvested more than twice per week.

(3) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(4) The scheduling of the sub-adult male harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of sub-adult male fur seals to killing fields, unless the NMFS representatives determine, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(5) Any taking of adult fur seals or young of the year, or the intentional taking of sub-adult female fur seals is prohibited.

(6) Pribilovians may only harvest male young of the year from September 16 through November 30 annually on St. George Island. Pribilovians may harvest up to 150 male fur seal young of the year annually up to the lower end of the harvest range established for St. George in the notice published pursuant to paragraph (b) of this section. When the lower end of the harvest

range has been reached paragraphs (f)(1)(iii) and (f)(3) of this section apply.

(7) No more than 50 male young of the year may be harvested from each of the following regions where fur seals congregate: East region includes the breeding areas known as East Reef and East Cliffs rookeries and the associated non-breeding hauling grounds; South region includes the breeding areas known as Zapadni and South rookeries and the associated non-breeding hauling grounds; and North region includes the breeding areas known as North and Staraya Artil rookeries and associated non-breeding hauling grounds, as shown in Figure 1 to part 216. No area may be harvested more than twice per week and must be in accordance with paragraph (d)(10) of this section.

(8) The scheduling of the young of the year harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested and un-harvested fur seals and minimize the take of female fur seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. No fur seal may be taken except by sealers using the harvesting methods implemented to reduce disturbance, injury, and accidental mortality of female fur seals. Pribilovians may use, but are not limited to, organized drives of young of the year fur seals from congregating areas to inland killing fields. Methods of harvest must include identification of male young of the year, followed by stunning and immediate exsanguination, unless the NMFS representatives, in consultation with the Pribilovians conducting the harvest, determine that alternative methods will not result in increased stress to harvested and un-harvested fur seals, increased disturbance or injury to resting fur seals, or the accidental mortality of female seals.

(9) Any harvest of sub adult or adult fur seals or intentional harvest of young of the year female fur seals is prohibited.

(10) No young of the year fur seals may be taken from any designated breeding area or its associated hauling ground(s) where the most recent NMFS analysis projects that pup production has greater than a 5 percent probability of falling below a level capable of sustaining a harvest in 10 years.

(11) No more than 120 days after the final subsistence harvest each calendar year, NMFS representatives and St. George Island community members must review the implementation of the harvest and consider best harvest practices and determine if implementation can be improved to better meet the subsistence needs of the St. George Island community or reduce negative effects on fur seals.

(e) St. Paul Island. Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week.

(1) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested fur seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities.

(2) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

(3) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(4) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(5) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

(6) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(f) Harvest suspension provisions. (1) The Assistant Administrator is required to suspend the take provided for in §§ 216.71 and 216.72 when:

(i) (S)He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied; or

(ii) (S)He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached; or

(iv) With regard to St. George Island, two female fur seals have been killed on St. George Island.

(2) A suspension based on a determination under paragraph (f)(1)(ii) of this section may be lifted by the Assistant Administrator if (s)he finds that the conditions that led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (f)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine if a finding under paragraph (f)(1)(i) of this section is warranted. If the harvest is not suspended under paragraph (f)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(4) A suspension based on a determination under paragraph (f)(1)(iv) of this section may be lifted by the Assistant Administrator if (s)he finds that the conditions that led to the killing of two female fur seals have been remedied and additional or improved methods to detect female fur seals in the harvest are being implemented.

(g) Harvest termination provisions. (1) The Assistant Administrator shall terminate the annual take provided for in § 216.71 on August 8 for sub-adult males on St. Paul and St. George Islands and on November 30 for male young of the year on St. George Island.

(2) The Assistant Administrator shall terminate the take provided for in § 216.71 when (s)he determines under paragraph (f)(1)(i) or (f)(1)(iii) of this section that the subsistence needs of the Pribilovians on the island have been satisfied or the upper end of the harvest range has been reached, whichever occurs first.

(3) The Assistant Administrator shall terminate the take on St. George Island provided for in § 216.71 if a total of three female fur seals are killed during the season on St. George Island.

5. Section 216.74 is revised to read as follows:

§ 216.74 Cooperation between fur seal harvesters, Tribal and Federal Officials.

(a) St. George Island. Federal scientists and Pribilovians cooperatively manage the subsistence harvest of northern fur seals under section 119 of the Marine Mammal Protection Act (16 U.S.C. 1388). The Federally recognized tribes on the Pribilof Islands have signed agreements describing a shared interest in the conservation and management of fur seals and the designation of co-management councils that meet and address the purposes of the co-management agreements for representatives from NMFS, St. George and St. Paul tribal governments. NMFS representatives are responsible for compiling information related to sources of human-caused mortality and serious injury of marine mammals. The Pribilovians are

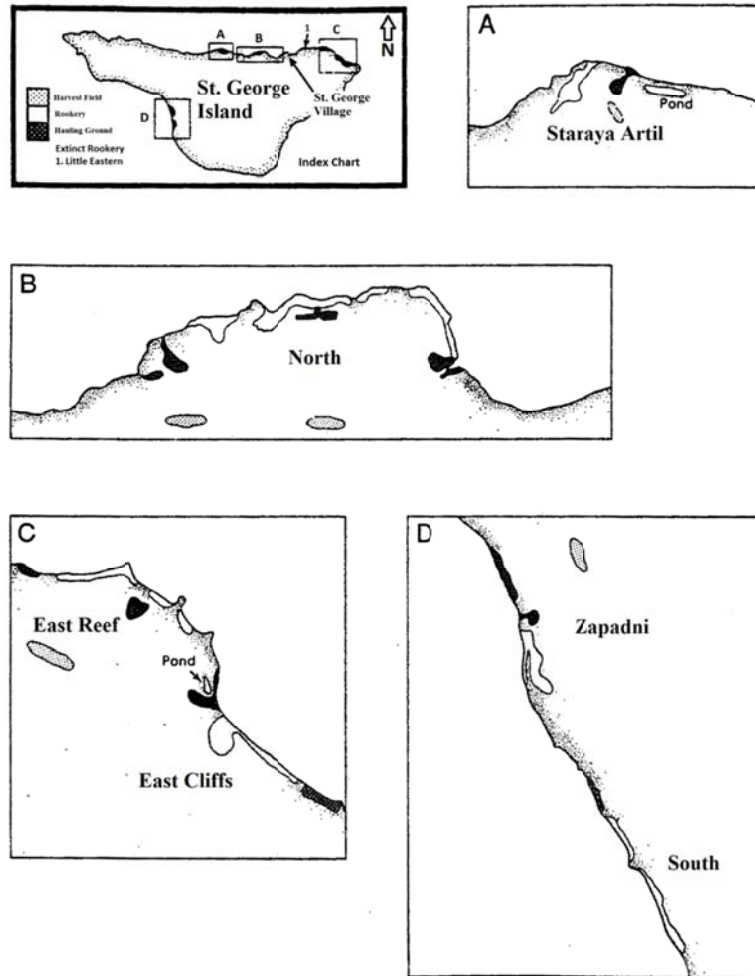
responsible for reporting their subsistence needs and actual level of subsistence take. This information is used to update stock assessment reports and make determinations under § 216.72. Pribilovians who take fur seals for subsistence uses collaborate with NMFS representatives and the respective Tribal representatives to consider best harvest practices under co-management and to facilitate scientific research.

(b) St. Paul Island. The Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 1320.7(k)(3), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

- (1) The number of seals taken each day in the subsistence harvest,
- (2) The extent of the utilization of fur seals taken, and
- (3) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under §215.32(e) of this chapter.

6. Add Figure 1 to part 216 as follows:

Figure 1 to Part 216-- Northern Fur Seal Breeding Areas (Rookeries) and Hauling Grounds on St. George Island, Alaska



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